

CLERK'S OFFICE U.S. DIST. COURT  
AT LYNCHBURG, VA  
FILED

JULIA C. DUDLEY, CLERK  
BY: *F. Coleman*  
DEPUTY CLERK

**Civil Action No. 6:14cv 60050**

4. The plaintiff further invokes this Court's supplemental jurisdiction, pursuant to 28 U.S.C. § 1367 over any and all state claims that are so related to the claims in this action within the original jurisdiction of this Court that they form part of the same case or controversy.

### **PARTIES**

5. Plaintiff, Patrick McCrystal, is a citizen of the United States and a resident of the City of Charlottesville, VA.

6. Defendant L.J. Ayers is and was at all time relevant a constitutionally elected Sheriff of Amherst County, Virginia and the employer and supervisor of Deputy Phillip Harmsen.

7. Defendant Phillip Harmsen is and was at all times relevant to this action a deputy sheriff of the County of Amherst, Virginia, and acting under color of state law.

### **FACTS**

8. On May 9, 2014, Patrick McCrystal was in the custody of the Amherst County Sheriff's Office after an arrest for driving under the influence of alcohol.

9. Mr. McCrystal, handcuffed, was placed in a holding area in front of a teleconference monitor with a magistrate while in the custody of Defendant Harmsen at the Amherst County Adult Detention Center.

10. Mr. McCrystal was addressed by the magistrate, who asked him to explain his side of the arrest account. As Mr. McCrystal did so, he was told by Defendant Harmsen to "shut up."

11. Mr. McCrystal continued to follow the instructions from the magistrate to explain what happened.

12. Without warning and without justification, Defendant Harmsen angrily attacked Mr. McCrystal, pushed him to a wall and, using a takedown maneuver, threw the handcuffed Mr. McCrystal to the concrete floor face first. (This account was recorded on a DVD and is attached as an Exhibit A to this Complaint).

13. As a direct and proximate result of the aforesaid conduct of Defendant Harmsen, Mr. McCrystal suffered injuries to his eye and jaw. Once on the ground, Defendant Harmsen pressed his knee on Mr. McCrystal's head, exacerbating the pain and injuries to Mr. McCrystal's eye and jaw.

14. Mr. McCrystal was later transported to the hospital. There he was treated and released from the hospital and later released from custody on a self recognizance bond.

15. As a result of the take down by Defendant Harmsen, Mr. McCrystal suffered significant pain, suffering and emotional distress; he also incurred medical bills and potential permanent injury.

16. The next day, on May 10, 2014, Defendant Harmsen initiated an arrest and prosecution, without probable cause and with malice, by securing a felony warrant against Mr. McCrystal alleging that Defendant Harmsen was assaulted and battered by Mr. McCrystal. On May 15, 2014, Mr. McCrystal was arrested at his place of employment in Albemarle County, where he has been employed for 17 years, and thereafter released on his personal recognizance.

17. On September 28, 2014, the felony charge alleging the commission of an assault and battery against Defendant Harmsen was dismissed on motion of the Commonwealth's Attorney.

## **CAUSES OF ACTION**

### **FIRST CAUSE OF ACTION**

#### **Civil Rights Violation (Excessive Force - Defendant Harmsen)**

18. Mr. McCrystal repeats and realleges paragraphs 1 through 17 of this Complaint as if fully set forth herein.

19. Defendant Harmsen intentionally inflicted unnecessary and wanton pain and suffering on Mr. McCrystal .

20. As a direct and proximate result of the actions of Defendant Harmsden, in throwing Mr. McCrystal to the concrete floor, taken under color of law, Mr. McCrystal was deprived of rights protected by the Fourth and Fourteenth Amendments to the United States Constitution.

### **SECOND CAUSE OF ACTION**

#### **Assault and Battery (State Claim - Defendants Ayers and Harmsen)**

21. Mr. McCrystal repeats and re-alleges paragraphs 1 through 17 of this Complaint as if fully set forth herein.

22. The conduct of Defendant Harmsen as set forth herein constitutes assault and battery in violation of the law of the Commonwealth of Virginia.

23. The assault and battery was the proximate cause of serious injuries sustained by Mr. McCrystal and Defendant Harmsen's actions were wilful, reckless, wanton and intentional.

24. As the constitutionally elected sheriff, Defendant Ayers is also liable under Virginia law for compensatory damages caused by Deputy Harmsen.

**THIRD CAUSE OF ACTION**  
**Gross Negligence (State Claim - Defendants Ayers and Harmsen)**

25. Mr. McCrystal repeats and re-alleges paragraphs 1 through 17 of this Complaint as if fully set forth herein.

26. The conduct of Defendant Harmsen as set forth herein constituted gross negligence; said conduct causing serious injuries sustained by Mr. McCrystal and the conduct of Defendant Harmsen was wilful, reckless, wanton and intentional.

27. As the constitutionally elected sheriff, Defendant Ayers is also liable under Virginia law for compensatory damages caused by Deputy Harmsen.

**FOURTH CAUSE OF ACTION**  
**Civil Rights Violation ( False Arrest - Defendant Harmsen)**

28. Mr. McCrystal repeats and re-alleges paragraphs 1 through 17 of this Complaint as if fully set forth herein.

29. The conduct of Defendant Harmsen, securing an arrest warrant for Mr. McCrystal, without probable cause, violated Plaintiff's rights protected by the Fourth and Fourteenth Amendments to the United States Constitution..

30. As a direct and proximate result of this conduct of Defendant Harmsen, Mr. McCrystal suffered emotional distress and harm, legal bills and economic loss.

**FIFTH CAUSE OF ACTION**  
**(Malicious Prosecution - State Claim - Defendants Ayers and Harmsen)**

31. Mr. McCrystal repeats and re-alleges paragraphs 1 through 17 of this Complaint as if fully set forth herein.

32. The prosecution initiated by Defendant Harmsen was terminated in a manner

favorable to Mr. McCrystal.

33. The conduct of Defendant Harmsen, securing felony charges and securing a warrant for Mr. McCrystal's arrest, without probable cause and with malice, constitutes malicious prosecution under Virginia law.

34. As the constitutionally elected sheriff, Defendant Ayers is also liable under Virginia law for this conduct by Deputy Harmsen.

35. As a direct and proximate cause of the conduct described herein, Mr. McCrystal suffered emotional harm and distress as well as legal bills and economic loss.

### **REQUEST FOR RELIEF**

**WHEREFORE**, Mr. McCrystal seeks against the defendants, severally and jointly, where appropriate, the following relief:

- A. Reasonable compensatory damages to be determined by a jury;
- B. Punitive damages against Defendant Harmsen;
- C. Reasonable attorneys fees and costs against Defendant Harmsen pursuant to 42 U.S.C. § 1988; and,
- D. Such other and further relief as appears reasonable and just.

### **JURY TRIAL**

Plaintiff, Patrick McCrystal, hereby demands trial by jury.

Respectfully submitted,  
PATRICK MCCRYSTAL  
By Counsel

s/Steven D. Rosenfield  
Steven D. Rosenfield, VSB #16539  
Attorney at Law  
913 E. Jefferson Street  
Charlottesville, VA 22902  
434-984-0300 (Tel)  
434-220-4852 (Fax)  
E-mail: [attyrosen@aol.com](mailto:attyrosen@aol.com)

Jeffrey E. Fogel, VSB #76345  
Attorney at Law  
913 E. Jefferson Street  
Charlottesville, VA 22902  
434-984-0300 (Tel)  
434-220-4852 (Fax)  
E-mail: [Jeff.Fogel@gmail.com](mailto:Jeff.Fogel@gmail.com)

Counsel for Plaintiff, Patrick McCrystal